

1 HOUSE BILL NO. 2132
 2 AMENDMENT IN THE NATURE OF A SUBSTITUTE
 3 (Proposed by the House Committee for Courts of Justice
 4 on _____)
 5 (Patron Prior to Substitute--Delegate Wilt)

6 A BILL to amend and reenact §§ 56-265.15, 56-265.16:1, 56-265.17, 56-265.17:3, 56-265.18, 56-265.19,
 7 56-265.22, 56-265.24, 56-265.31, and 56-265.32 of the Code of Virginia and to amend the Code
 8 of Virginia by adding a section numbered 56-265.24:1, relating to Underground Utility Damage
 9 Prevention Act; schedule of excavation; stop work authority; penalties.

10 **Be it enacted by the General Assembly of Virginia:**

11 **1. That §§ 56-265.15, 56-265.16:1, 56-265.17, 56-265.17:3, 56-265.18, 56-265.19, 56-265.22, 56-**
 12 **265.24, 56-265.31, and 56-265.32 of the Code of Virginia are amended and reenacted and that the**
 13 **Code of Virginia is amended by adding a section numbered 56-265.24:1 as follows:**

14 **§ 56-265.15. Definitions; calculation of time periods.**

15 A. As used in this chapter:

16 "Abandoned" means no longer in service and physically disconnected from a portion of the
 17 underground utility line that is in use for storage or conveyance of service.

18 ~~"Commission" means the State Corporation Commission.~~

19 "Contract locator" means any person contracted by an operator specifically to determine the
 20 approximate horizontal location of the operator's utility lines that may exist within the area specified by a
 21 ~~notice served on a notification center~~ locate request.

22 "Damage" means any impact upon or removal of support from an underground facility as a result
 23 of excavation or demolition which according to the operating practices of the operator would necessitate
 24 the repair of such facility.

25 "Demolish" or "demolition" means any operation by which a structure or mass of material is
26 wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of
27 explosives which could damage underground utility lines.

28 "Designer" means any licensed professional designated by the project owner who designs
29 government projects, commercial projects, residential projects consisting of 25 or more units, or industrial
30 projects, which projects require the approval of governmental or regulatory authorities having jurisdiction
31 over the project area.

32 "Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger,
33 demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential
34 public services.

35 "Excavate" or "excavation" means any operation in which earth, rock, or other material in the
36 ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and
37 includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunneling,
38 scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any
39 structure or mass of material. "Excavate" or "excavation" ~~shall~~ does not include installation of a sign that
40 consists of metal, plastic, or wooden poles placed in the ground by hand or by foot without the use of tools
41 or equipment.

42 "Exigent circumstances" means circumstances outside of an operator's or contract locator's, as
43 described in subsection D of § 56-265.19, control that necessarily prevent an operator or locator from
44 completing the marking task, including a wrong address provided with the locate request; failure to
45 provide a reasonably specific location of proposed excavation; inaccessibility of the excavation site due
46 to physical barrier or risk of serious bodily injury; a locate request that cannot be carried out by a traditional
47 locating method and requires assistance from the operator; catastrophic technological failure outside of
48 the locator's, operator's, or notification center's control; or the area of excavation does not conform with
49 the requirements of subsection F of § 56-265.17.

50 "Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other
51 natural disasters.

52 "Hand digging" means any excavation involving nonmechanized tools or equipment. Hand
53 digging includes, but is not limited to, digging with shovels, picks, and manual post hole diggers, vacuum
54 excavation or soft digging.

55 "Locate request" means the completed delivery of information to the notification center requesting
56 markings for a specified area of excavation or demolition and receipt of the same by the notification center
57 in accordance with this chapter.

58 "Notification center" means an organization whose membership is open to all operators of
59 underground facilities located within the notification center's designated service area, which maintains a
60 data base, provided by its member operators, that includes the geographic areas in which its member
61 operators desire transmissions of notices of proposed excavation, and which has the capability to transmit,
62 within one hour of receipt, notices of proposed excavation to member operators by ~~teletype, telecopy,~~
63 ~~personal computer, or telephone~~ electronic means.

64 "Notify," "notice" or "notification" means the completed delivery of information to the person to
65 be notified, and the receipt of same by such person in accordance with this chapter. The delivery of
66 information includes, ~~but is not limited to,~~ the use of any electronic or technological means of data transfer.

67 "Operator" means any person who owns, furnishes or transports materials or services by means of
68 a utility line.

69 "Person" means any individual, operator, firm, joint venture, partnership, corporation, association,
70 municipality, or other political subdivision, governmental unit, department or agency, and includes any
71 trustee, receiver, assignee, or personal representative thereof.

72 "Positive response" means a code or phrase posted by an operator or locator to the notification
73 center detailing the marking status of a locate request.

74 "Positive response system" means the excavator-operator information exchange system that is
75 required by subsection E of § 56-265.16:1 and provides the means for operators or their contract locators
76 to respond to and report the marking status of a locate request.

77 "Private sewer lateral" means a privately owned, legally authorized utility line that transports
78 wastewater from one or more buildings to a sewer system utility line owned by a sewer system operator.

79 "Private water lateral" means a privately owned, legally authorized utility line that supplies water
80 from a water system utility line owned by a water system operator to one or more buildings or properties.

81 "Sewer system" means a system of utility lines used for conveying wastewater, and includes sewer
82 system laterals but does not include private sewer laterals.

83 "Sewer system lateral" means a lateral utility line located in the public right-of-way or public sewer
84 easement, owned by a sewer system operator, and used to transport wastewater to the operator's main
85 sewer line.

86 "Sewer system operator" means an operator of a sewer system.

87 "Soft digging" means any excavation using tools or equipment that utilize air or water pressure as
88 the direct means to break up soil or earth for removal by vacuum excavation.

89 ~~"Special project notice" means a valid notice to the notification center by an excavator covering a~~
90 ~~specific, unique or long term project.~~

91 "Utility line" means any item of public or private property which is buried or placed below ground
92 or submerged for use in connection with the storage or conveyance of water, sewage, telecommunications,
93 electric energy, cable television, oil, petroleum products, gas, or other substances, and includes ~~but is not~~
94 ~~limited to~~ pipes, sewers, combination storm/sanitary sewer systems, conduits, cables, valves, lines, wires,
95 manholes, attachments, and those portions of poles below ground. The term "sewage" ~~as used herein~~ does
96 not include any gravity storm drainage systems. Except for any publicly owned gravity sewer system
97 within a county which has adopted the urban county executive form of government, the term "utility line"
98 does not include any gravity sewer system or any combination gravity storm/sanitary sewer system within
99 any counties, cities, towns or political subdivisions constructed or replaced prior to January 1, 1995. No
100 excavator shall be held liable for the cost to repair damage to any such systems constructed or replaced
101 prior to January 1, 1995, unless such systems are located in accordance with § 56-265.19.

102 "Water system" means a system of utility lines used for supplying water, and does not include
103 private water laterals.

104 "Water system operator" means an operator of a water system.

105 "Willful" means an act done intentionally, knowingly, and purposely, without justifiable excuse,
106 as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

107 "Working day" means every day, except Saturdays, Sundays, and legal state and national holidays.

108 B. Unless otherwise specified, all time periods used in this chapter shall be calculated from the
109 time of the original ~~notification to the notification center~~ locate request as provided in § 56-265.17. In
110 addition, all time periods exclude Saturdays, Sundays, and legal state and national holidays.

111 **§ 56-265.16:1. Operators to join notification centers; certification.**

112 A. Every operator, including counties, cities and towns, but excluding the Department of
113 Transportation, having the right to bury underground utility lines shall join the notification center for the
114 area.

115 B. Every notification center shall be certified by the Commission. The Commission shall determine
116 the optimum number of notification centers in the Commonwealth. If the Commission determines that
117 there shall be more than one notification center in the Commonwealth, it shall define the geographic area
118 to be served by each notification center.

119 C. Any corporation desiring to serve as the notification center for an area of the Commonwealth
120 may apply to the Commission to be certified as the notification center for that area. The Commission shall
121 have authority to grant, amend, or revoke certificates under regulations promulgated relating to
122 certification. An application for certification shall include such information as the Commission may
123 reasonably require addressing the applicant's operational plan for the notification center.

124 D. Every Commission action regarding the optimum number of notification centers, the
125 geographic area to be served by each notification center, the promulgation of notification center
126 certification regulations, and the grant, amendment, or revocation of notification center certifications shall
127 be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health,
128 property or essential public services resulting from damage to underground utility lines. Any action by the
129 Commission to approve or revoke any notification center certification shall:

130 1. Ensure protection for the public from the hazards that this chapter is intended to prevent or
131 mitigate;

132 2. Ensure that all persons served by the notification center receive an acceptable level of
133 performance, which level shall be maintained throughout the period of the notification center's
134 certification; and

135 3. Require the notification center and its agents to demonstrate financial responsibility for any
136 damages that may result from their violation of any provision of this chapter. Such requirement may be
137 met by purchasing and maintaining liability insurance on such terms and in such amount as the
138 Commission deems appropriate.

139 E. A notification center shall maintain ~~an excavator operator information exchange~~ a positive
140 response system in accordance with notification center certification regulations promulgated by the
141 Commission. The members of a notification center shall be responsible for developing and implementing
142 a public awareness program to ensure that all parties affected by this chapter shall be aware of their
143 responsibilities. There shall be only one notification center certified for each geographic area defined by
144 the Commission.

145 **§ 56-265.17. Notification required prior to excavation or demolition; waiting periods;**
146 **marking of proposed site.**

147 A. ~~Except as provided in subsection G, no~~ No person, ~~including operators,~~ shall make or begin any
148 excavation or demolition without first ~~notifying~~ submitting a locate request to the notification center ~~for~~
149 ~~that area. Notice to the notification center~~ Submission of a locate request shall be deemed to be notice to
150 each operator who is a member of the notification center. The notification center shall provide the
151 excavator with the identity of utilities that will be notified of the proposed excavation or demolition.
152 Except for counties, cities, and towns, an excavator who willfully fails to ~~notify the notification center of~~
153 submit a locate request for a proposed excavation or demolition shall be liable to the operator whose
154 facilities are damaged by that excavator, for three times the cost to repair the damaged property, provided
155 that the operator is a member of the notification center. The total amount of punitive damages awarded
156 under this section, as distinguished from actual damages, shall not exceed \$10,000 in any single cause of
157 action.

158 B. Except in the case of an emergency as defined in § 56-265.15 or in cases subject to subsection
159 C, the excavator ~~may~~ shall only commence work ~~under one of the following conditions:~~

160 1. ~~After waiting forty eight hours, beginning 7:00 a.m. the next working day following notice to~~
161 ~~the notification center;~~

162 2. ~~At any time, if the excavator confirms that all applicable operators have either marked their~~
163 ~~underground utility lines or reported that no lines are present in the vicinity of the excavation or~~
164 ~~demolition. The confirmation shall be obtained by contacting or receiving information from the~~
165 ~~notification center's excavator operator information exchange system~~ the excavator has confirmed, by
166 reviewing the positive response information posted on the notification center's positive response system,
167 that each operator has marked its utility lines, notified the notification center that its utility lines are not
168 present in the area of proposed excavation, or otherwise posted a positive response indicating excavation
169 may begin; or

170 ~~3-~~2. If informed by the notification center that no operators are to be notified.

171 If any operator fails to respond to the ~~excavator operator information exchange~~ positive response
172 system as required by this chapter, the notification center shall renotify any operator of its failure. This
173 renotification shall not constitute an exemption from the duties of the operator set forth in § 56-265.19.

174 C. ~~The excavator shall exercise due care at all times to protect underground utility lines. If, upon~~
175 ~~arrival at the site of a proposed excavation after at least 48 hours beginning with 7:00 a.m. the next working~~
176 ~~day following a locate request or on the date of excavation, the excavator, upon arrival at the site of a~~
177 ~~proposed excavation, observes clear evidence of the presence of an unmarked utility line in the area of the~~
178 ~~proposed excavation, the excavator shall not begin excavating until three hours after an additional-call~~
179 ~~contact is made to the notification center for the area, provided that no information has been posted to the~~
180 ~~positive response system or information posted to the positive response system is inconsistent with the~~
181 ~~clear evidence observed by the excavator.~~

182 The operator of any unmarked utility line shall respond within three hours of the excavator's ~~call~~
183 ~~contact~~ to the notification center. After the clear evidence of an unmarked utility line is addressed pursuant
184 to the additional contact to the notification center, excavation may proceed. During any excavation subject

185 to this subsection, the excavator shall exercise reasonable care at all times to protect underground utility
186 lines and shall be liable for any damages.

187 D. The excavator's notification shall be valid for ~~fifteen~~ 15 working days from 7:00 a.m. on the
188 next working day following ~~notice to the notification center~~ a locate request or 15 working days following
189 a scheduled excavation date provided to the notification center, whichever is later. Three working days
190 before the end of the ~~fifteen-working-day~~ 15-working-day period, or at any time when line-location
191 markings on the ground become illegible, the excavator intending to excavate shall contact the notification
192 center and request the re-marking of lines. The operator shall re-mark the lines as soon as possible;
193 however, the re-marking of the lines shall be completed within ~~forty-eight~~ 48 hours from 7:00 a.m. on the
194 next working day following the request for the re-mark. Such re-marking shall be valid for an additional
195 ~~fifteen~~ 15 working days from 7:00 a.m. on the next working day following ~~notice to the notification center~~
196 a locate request.

197 E. ~~In the event~~ If a specific location of the excavation cannot be given as required by subdivision
198 2 of § 56-265.18, prior to notifying the notification center pursuant to subsection A ~~of this section~~, the
199 person proposing to excavate or demolish shall mark the route or boundary of the site of the proposed
200 excavation or demolition by means of white paint, if practical.

201 F. The extent of the excavator's proposed ~~work~~ excavation or demolition shall be a work area that
202 can be excavated within ~~fifteen~~ 15 working days from 7:00 a.m. on the next working day following ~~notice~~
203 ~~to the notification center~~ a locate request. The area covered under each ~~notice~~ locate request shall not
204 exceed ~~one~~ one-third of a mile.

205 G. ~~An excavator may request a special project notice from the notification center for the purpose~~
206 ~~of notifying the operators of the excavator's desire to enter into an agreement for locating and protecting~~
207 ~~the operator's underground utility lines for a specific, unique or long-term project. An excavator using a~~
208 ~~special project notice shall have complete control over all activities within the project area. The terms and~~
209 ~~conditions of such agreements must be agreed upon, in writing, by the excavator and the operator before~~
210 ~~excavation commences. Such agreement and compliance with the terms of the agreement shall constitute~~
211 ~~an exemption from the requirements of subsections A, B, C, D and E of this section.~~

212 **§ 56-265.17:3. Procedures for operators in response to a designer notice.**

213 An operator, upon notification by a designer in accordance with § 56-265.17:1, shall:

214 1. Respond to the designer's request for underground utility line information within ~~five~~ 15
215 working days in accordance with subdivisions 2, 3, and 4 ~~of this section~~;

216 2. Provide designers with the operator's name, the type of underground utility line, and the
217 approximate horizontal location of the utility line. The foregoing information may be provided to the
218 designer through the means that include, ~~but are not limited to~~, field locates, maps, surveys, installation
219 records or other means. ~~If the designer requests field locates, the operator shall provide field locates in~~
220 ~~accordance with the accuracy set forth in subsection A of § 56-265.19.~~ Marking shall be done by both
221 paint and flags whenever possible;

222 3. Provide such information about the location of the utility lines to designers for informational
223 purposes only. Operators will not be liable for any incorrect information provided or for the subsequent
224 use of this information, nor will they be subject to civil penalties for the accuracy of the information or
225 marks provided. Any concerns about the accuracy of information or marks should be directed to the
226 appropriate operator; and

227 4. Respond to the ~~operator-excavator information exchange~~ positive response system by no later
228 than 7:00 a.m. on the sixteenth working day following the designer's ~~notice to the notification center~~ locate
229 request.

230 **§ 56-265.18. Notification requirements.**

231 Every locate request and designer notice served by any person on ~~a~~ the notification center shall
232 contain the following information:

233 1. The name of the individual serving such notice.

234 2. The specific location of the proposed ~~work~~ excavation or demolition. ~~In the event~~ If a specific
235 description of the location of the excavation cannot be given, the person proposing to excavate or demolish
236 shall comply with subsection E of § 56-265.17.

237 3. The name, physical address, telephone number, and ~~telefacsimile number~~ electronic mailing
238 address, if available, of the excavator or demolisher, to whom notification can be given.

239 4. The excavator's or demolisher's field telephone number and, if ~~one is~~ available, electronic
240 mailing address.

241 5. The type and extent of the proposed ~~work~~ excavation or demolition.

242 6. The name of the person for whom the proposed ~~work~~ excavation or demolition is being
243 performed.

244 **§ 56-265.19. Duties of operator; regulations.**

245 A. If a proposed excavation or demolition is planned in such proximity to the underground utility
246 line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the
247 approximate horizontal location of the underground utility line on the ground to within two feet of either
248 side of the underground utility line by means of stakes, paint, flags, or a combination thereof. The operator
249 or contract locator shall mark the underground utility line and report the marking status to the ~~excavator-~~
250 ~~operator information exchange~~ positive response system by no later than 7:00 a.m. on the third working
251 day following the excavator's ~~notice to the notification center~~ locate request, unless a scheduled excavation
252 date is provided by the excavator to the notification center or the operator or contract locator is unable to
253 do so due to extraordinary or exigent circumstances. Any scheduled excavation date shall not be less than
254 48 hours nor more than 12 working days from the date of the locate request. If a scheduled excavation
255 date is provided by the excavator to the notification center, the operator or contract locator shall mark the
256 underground utility line and report the marking status to the positive response system by no later than 7:00
257 a.m. on the scheduled day of excavation. Any locate request made on a day that is not a working day shall
258 be considered as having been submitted to the notification center on the next working day at 7:00 a.m. If
259 the operator is unable to mark the location within the time allowed under this section due to extraordinary
260 or exigent circumstances, the operator shall notify directly the person who proposes to excavate or
261 demolish and shall, in addition, notify the person of the date and time when the location will be marked.
262 The deferral to mark for extraordinary or exigent circumstances shall be no longer than 96 hours from
263 7:00 a.m. on the next working day following ~~notice to the notification center~~ the locate request, unless a
264 longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the
265 notification center of any deferral.

266 B. If a proposed excavation or demolition is not planned in such proximity to the operator's
267 underground utility lines that the utility line may be damaged, the operator shall so report to the
268 notification center's ~~excavator-operator information exchange~~ positive response system no later than 7:00
269 a.m. on the third working day following the excavator's ~~notice to the notification center~~ locate request.

270 C. An operator shall participate in all preplanning and preconstruction meetings originated by state,
271 county or municipal authorities relating to proposed construction projects which may affect the operator's
272 existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning
273 and preconstruction meetings.

274 D. Any contract locator acting on behalf of an operator and failing to perform the duties imposed
275 by this chapter shall be subject to the liabilities in § 56-265.25 and the civil penalties in § 56-265.32.

276 E. Locators shall be trained in applicable locating industry standards and practices no less stringent
277 than the National Utility Locating Contractors Association's locator training standards and practices. Each
278 locator's training shall be documented. Such documents shall be maintained by the operator or contract
279 locator.

280 F. The Commission shall be authorized to adopt regulations designating: (i) letters for each
281 operator to be used in conjunction with marking of underground utility lines, and (ii) symbols for marking
282 of underground utility lines, in compliance with ~~subsection B~~ subdivision 2 of § 56-265.17:3. Such letter
283 designation and marking symbols shall be in accordance with industry standards.

284 G. For underground utility lines abandoned after July 1, 2002, operators shall make a reasonable
285 attempt to keep records of these abandoned utility lines, excluding service lines connected to a single-
286 family dwelling unit. When an operator has knowledge that the operator's abandoned utility lines may be
287 present within the area of the proposed excavation, the operator shall provide a response to the ~~excavator-~~
288 ~~operator information exchange~~ positive response system. Such information regarding abandoned lines
289 shall be for informational purposes only. An operator shall not be liable to any person, or subject to civil
290 penalties, as a result of the operator's providing incorrect information regarding abandoned lines or the
291 subsequent use of such information. The ~~excavator-operator information exchange~~ positive response

292 system may refer any person with concerns about the accuracy of information regarding abandoned lines
293 to the appropriate operator.

294 H. An operator shall respond to an emergency notice as soon as possible but no later than three
295 hours from the excavator's ~~call~~ contact to the notification center.

296 **§ 56-265.22. Duties of notification center upon notification by person intending to excavate;**
297 **record of notification made by telephone required.**

298 A. The notification center shall, upon receiving notice by a person, notify all member operators
299 whose ~~underground~~ utility lines are ~~located~~ present in the area of the proposed project, excavation, or
300 demolition. The notification center shall also indicate the names of those operators being notified to the
301 person providing notice.

302 B. If the notification required by this chapter is made by telephone, a record of such notification
303 shall be maintained by the operators or notification center notified to document compliance with the
304 requirements of this chapter, and such records shall be maintained in compliance with the applicable
305 statute of limitations.

306 C. The notification center shall notify excavators, within the time frame allowed by the law to
307 mark underground utility lines, of any responses placed on the ~~excavator-operator information exchange~~
308 positive response system by a locator. Such notification shall occur by ~~facsimile or other~~ mutually
309 acceptable means of automatically transmitting and receiving this information.

310 If the excavator cannot provide the notification center with a ~~facsimile number or other~~ mutually
311 acceptable means of automatically transmitting and receiving this information, it shall be the excavator's
312 responsibility to contact the ~~excavator-operator information exchange~~ positive response system after the
313 period allowed by law to mark underground facilities and prior to commencing excavation in order to
314 determine if any responses to the notice have been recorded.

315 **§ 56-265.24. Duties of excavator.**

316 A. No excavator shall begin any excavation or demolition before reviewing and heeding the
317 positive response marking status of the excavation area. Any person excavating within two feet on either
318 side of the staked or marked location of an operator's underground utility line or demolishing in such

319 proximity to an underground utility line that the utility line may be destroyed, damaged, dislocated or
320 disturbed shall take all reasonable steps necessary to properly protect, support and backfill underground
321 utility lines. For excavations not parallel to an existing underground utility line, such steps shall include,
322 but may not be limited to:

- 323 1. Exposing the underground utility line to its extremities by hand digging;
- 324 2. Not utilizing mechanized equipment within two feet of the extremities of all exposed utility
325 lines; and
- 326 3. Protecting the exposed utility lines from damage.

327 In addition, for excavations parallel to an existing utility line, such steps shall include, but may not
328 be limited to, hand digging at reasonable distances along the line of excavation. The excavator shall
329 exercise due care at all times to protect underground utility lines when exposing these lines by hand
330 digging.

331 B. If the markings locating the underground lines become illegible due to time, weather,
332 construction, or any other cause, the person performing the excavation or demolition shall so notify the
333 notification center for the area. Such notification shall constitute an extension under subsection D of § 56-
334 265.17.

335 C. If, after at least 48 hours beginning with 7:00 a.m. the next working day following a locate
336 request or on the date of excavation, upon arrival at the site of a proposed excavation, the excavator
337 observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation,
338 the excavator shall not begin excavating until three hours after an additional-~~call~~ contact is made to the
339 notification center for the area pursuant to subsection ~~B_C~~ of § 56-265.17 and the excavator has verified
340 that no information has been posted to the positive response system or information posted to the positive
341 response system is inconsistent with the clear evidence observed by the excavator.

342 D. In the event of any damage to, or dislocation, or disturbance of any underground utility line
343 including its appurtenances, covering, and coating, in connection with any excavation or demolition, the
344 person responsible for the excavation or demolition operations shall immediately notify the operator of
345 the underground utility line and shall not backfill around the underground utility line until the operator

346 has repaired the damage or has given clearance to backfill. The operator shall either commence repair of
347 the damage or give clearance to backfill within twenty-four hours, and upon his failure to commence or
348 prosecute with diligence such repair or give clearance, the giving of clearance shall be presumed.

349 E. If the damage, dislocation, or disturbance of the underground utility line creates an emergency,
350 the person responsible for the excavation or demolition shall, in addition to complying with subsection D
351 ~~of this section~~, take immediate steps reasonably calculated to safeguard life, health and property.

352 F. With the exception of designers requesting marking of a site, in accordance with § 56-265.17,
353 no person, including operators, shall request marking of a site through a notification center unless
354 excavation shall commence within thirty working days from the date of the original notification to the
355 notification center. Except for counties, cities, and towns, any person who willfully fails to comply with
356 this subsection shall be liable to the operator for three times the cost of marking its utility line, not to
357 exceed \$1,000.

358 G. Any person performing excavation or demolition shall provide to the operator of the
359 underground utility line in the area of excavation or to the appropriate regulatory authority having
360 jurisdiction, the number issued by the notification center for that excavation site in response to the
361 excavator's notice, within one hour of a request for the number issued by the notification center.

362 H. If an excavator discovers an unmarked line, the excavator shall protect this line pursuant to
363 subsection C ~~of this section~~. An excavator shall not remove an abandoned line without first receiving
364 authorization to do so by the operator.

365 **§ 56-265.24:1. Request to cease operation; immediate threat; penalty.**

366 Notwithstanding the provisions of § 56-265.15:1, any person, as defined in § 56-265.15, who
367 knowingly and intentionally excavates after being notified by a representative of the Commission of a
368 determination that such excavation constitutes an immediate threat to safety or property and such
369 representative requests that excavation cease is guilty of a Class 6 felony. The representative of the
370 Commission shall immediately notify the agency with primary law-enforcement authority over the area
371 of excavation, as well as the fire marshal, (i) that such excavation site is a threat to safety or property and
372 (ii) of the request to cease excavation.

373 **§ 56-265.31. Commission to establish advisory committee.**

374 A. The Commission shall establish an advisory committee consisting of representatives of the
375 following entities: Commission staff, utility operator, notification center, excavator, municipality,
376 Virginia Department of Transportation, Board for Contractors, and underground line locator. Persons
377 appointed to the advisory committee by the Commission shall have expertise with the operation of the
378 Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be
379 assigned by the Commission, including ~~the review of~~ reviewing reports of violations of the chapter,
380 establishing positive response codes for use by the notification center's positive response system, and
381 ~~make~~ making recommendations to the Commission.

382 B. The members of the advisory committee shall be immune, individually and jointly, from civil
383 liability for any act or omission done or made in performance of their duties while serving as members of
384 such advisory committee, but only in the absence of willful misconduct.

385 **§ 56-265.32. Commission to impose civil penalties for certain violations; establishment of**
386 **Underground Utility Damage Prevention Special Fund.**

387 A. The Commission may, by judgment entered after a hearing on notice duly served on any person
388 not less than 30 days before the date of the hearing, impose a civil penalty not exceeding ~~\$2,500~~ \$10,000
389 for each violation of subsection A of § 56-265.17 and \$5,000 for all other violations of this chapter, if it
390 is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise
391 reasonable care. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor
392 preempt the right of any party to obtain civil damages for personal injury or property damage in private
393 causes of action. This subsection shall not authorize the Commission to impose civil penalties on any
394 county, city, town, or other political subdivision. However, the Commission shall inform the counties,
395 cities, towns, and other political subdivisions of reports of alleged violations involving the locality or
396 political subdivision and, at the request of the locality or political subdivision, suggest corrective action.

397 B. If the Commission asserts there is recurring noncompliance with any of the provisions of this
398 chapter by a county, city, town, or other political subdivision, the Commission, upon written notice to the
399 chairman of such operator's board or, in the case of a city or town, the mayor of such operator's council,

400 and to such operator's chief executive officer, may require a written response by such person or his
401 designee. Such response shall be made within 30 days of the operator's receipt of written notice from the
402 Commission. The response shall confirm that the operator will comply promptly or explain why it disputes
403 any assertion by the Commission of noncompliance. If the operator is not able to return to compliance
404 promptly, the operator shall describe its plan to achieve compliance in a corrective action plan to be
405 submitted to the Commission no later than 60 days after the receipt of the written notice. Following
406 submittal of a corrective action plan, the Commission may convene a hearing for the purpose of receiving
407 additional evidence, determining whether noncompliance has occurred, and determining further suggested
408 corrective action. The Commission may also convene such a hearing if the operator fails to provide a
409 written response or a corrective action plan as required by this subsection, or provides a response that
410 disputes the Commission's assertions. Nothing in this section shall limit the Commission's powers under
411 this chapter with respect to persons who are not counties, cities, towns, or political subdivisions of the
412 Commonwealth.

413 C. The Underground Utility Damage Prevention Special Fund (hereinafter referred to as Special
414 Fund) is hereby established as a revolving fund to be used by the Commission for administering the
415 regulatory program authorized by this chapter. The Special Fund shall be composed entirely of funds
416 generated by and for the enforcement of this chapter. Enforcement of this chapter also includes education
417 and outreach provided by the Commission for training and educational programs for excavators, operators,
418 utility line locators, and other persons. Excess funds shall be used to support any one or more of the
419 following: (i) public awareness programs established by a notification center pursuant to subsection B of
420 § 56-265.16:1; (ii) training and education programs for excavators, operators, line locators, and other
421 persons; and (iii) programs providing incentives for excavators, operators, line locators, and other persons
422 to reduce the number and severity of violations of the Act. The Commission shall determine the
423 appropriate allocation of any excess funds among such programs, and shall establish required elements
424 for any program established under clause (ii) or (iii).

425 D. All civil penalties collected pursuant to this section shall be deposited into the Underground
426 Utility Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special Fund.

427 The Special Fund shall be established on the books of the Commission comptroller and any funds
428 remaining in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall
429 not revert to the general fund, but shall remain in the Special Fund.

430 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
431 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
432 **appropriation is _____ for periods of imprisonment in state adult correctional facilities;**
433 **therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia**
434 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-**
435 **19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation is _____ for**
436 **periods of commitment to the custody of the Department of Juvenile Justice.**

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